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Ontario Labour Relations Board HIGHLIGHTS

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NOTICES TO THE COMMUNITY

Holiday Season Board Schedule
The Board's holiday operations schedule is attached.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in November of this year. These decisions will appear in the November/December issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute www.canlii.org.

Employment Standards – When a service contract for facilities management was re-tendered, Star Group gave written notice of termination to its employees to coincide with their final weeks of employment with Star – Black & McDonald, the successful bidder, did not hire K and did not fulfil its obligations to him, arguing K had been given proper notice by Star Group – An ESO issued an Order to Pay against Black & McDonald; B&M appealed – The Board held that the ESA provisions speak directly to the protection of building services workers and the successor's duty to hire the incumbent workers or provide them with a monetary equivalent to notice of termination; Black & McDonald did neither – Application dismissed (second file, an employee application, dismissed for other reasons)

BLACK & MCDONALD LIMITED; RE: KENDALL JUDD; RE: STAR GROUP INTERNATIONAL TRADING CORPORATION; RE: BRIAN KAY; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB File No. 3356-14-ES & 3429-14-ES; Dated November 20, 2015; Panel: Kelly Waddingham (16 pages)

Collective Agreement – Duty to Bargain in Good Faith – *Prima Facie* Motion – The Employer alleged that the Union breached its duty to bargain in good faith when it failed to disclose information in relation to health and welfare benefits that the Employer would be administrating under a renewed collective agreement – The union argued that the proposal to change the administration of the plan was an employer initiative, and the Employer did not ask the Union for any information concerning the administration of the plan – The union brought a motion to have the application dismissed on a no *prima facie* basis for failure to make out a breach, as well as for delay and abuse of process – The Board noted that an obligation to disclose absent a request for information is a complex matter that requires a balance of considerations – The Board found that the question was whether the failure to disclose was equivalent to misrepresentation and therefore bad faith – The Board ruled that it would not be appropriate to answer this on a *prima facie* basis – Motion dismissed; matter proceeds to hearing

CARE PARTNERS; RE: SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 1 CANADA; OLRB Board No. 0568-15-U; Dated November 10, 2015, Panel: Eli A.

Gedalof, Edward Chudak and P. LeMay (13 pages)

Construction Industry Grievance – The Sheet Metal Workers grieved Durr's fabrication of a sealer gel oven and cooling tunnel at its Michigan facility, allegedly contrary to the provisions of the collective agreement binding on the parties – While Durr legitimately and successfully bid on the work, it has no operations anywhere in Canada that could manufacture the required equipment – The Sheet Metal Workers argued that to allow Durr to perform the work outside of Ontario would gut the subcontracting language of the CA and deprive companies with fabrication facilities in the province (and their employees) of the work – The Board disagreed, holding that the CA language was clear and unambiguous; the Windsor Appendix did not contain "work preservation" language similar to what was found in the US collective agreement; nor did the Appendix contain language that would require local manufacture for local installation – Grievance dismissed

DURR INDUSTRIES INC.; RE: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL 235; OLRB file No. 3661-14-G; Dated November 3, 2015; Panel: John D. Lewis (23 pages)

Construction Industry Grievance – Practice and Procedure – Stay – The IBEW sought to proceed with a grievance against an employer who had a Notice of Intention to make a proposal in Bankruptcy issued – The IBEW, relying on a criminal matter (*R. v. Fitzgibbon*) and a series of arbitral decisions, argued that the matter could proceed for purposes of determining liability, with no subsequent enforcement of the payment – The Board disagreed, holding that a criminal context is distinguishable from a civil matter; in *Fitzgibbon*, the compensation order was part of the criminal process – A referral of a grievance is an action seeking to recover damages – However, the Board had not received any communication other than the Notice of Intention – The Registrar was directed to set the matter down for hearing pending proof from the trustee that the actual Proposal had been delivered to the IBEW (in which case the matter would be stayed)

EHRLICH ELECTRIC COMPANY INC.; RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353; OLRB File No. 1772-15-G; Dated November 10, 2015; Panel: David A. McKee (6 pages)

Employment Standards – When L announced her pregnancy and imminent leave, the employer decided to eliminate her position in Ontario and replace her with a permanent staffperson in British Columbia – On L's return from leave, the employer made no serious efforts to find her comparable employment – The Board found the employer used L's pregnancy and request for leave as an excuse to eliminate her position; in fact, the employer should have offered L the position in British Columbia – The Board affirmed its view that reinstatement with payment of lost compensation is the appropriate and preferred remedy for this type of violation of the ESA – Without reinstatement as an available remedy, the other remedies become no more than a licence for employers to violate the Act – Here, however, L no longer sought to be reinstated; monetary award ordered – Application allowed

JYSK LINEN N FURNITURE INC.; RE: MELANIE LAMOUREUX; RE: DIRECTOR OF EMPLOYMENT STANDARDS; OLRB file No. 1637-14-ES; Dated November 20, 2015; Panel: Brian McLean (15 pages)

Certification – Discharge – Unfair Labour Practice – The union alleged that the employer breached s. 96 by terminating G's employment in an attempt to prevent the union from filing an application for certification – The Board found that the employer failed to discharge its onus of demonstrating that G's involvement in organizing activity played no part in its decision to terminate her employment – The Board noted that three weeks prior to her termination, G was trying to interest fellow employees in union representation; moreover, a member of management was aware of G's interest in unionization – At a general meeting where G raised concerns she and other employees had about the terms and conditions of their employment, the employer expressed opposition to union representation – G was then terminated following the meeting – The evidence also established that although the employer valued seniority and greater qualifications, G had greater seniority than five other employees – Board orders reinstatement and compensation

MISSISSAUGA LONG TERM CARE FACILITY INC.; RE: CANADIAN UNION OF PUBLIC EMPLOYEES; OLRB file No. 2805-14-

U; Dated November 10, 2015; Panel: Owen V. Gray (26 pages)

Construction Industry Grievance – Intervenor – Standing – Local 353 sought to intervene in Local 804's grievance against Roberts OnSite regarding the interpretation of the hours of work and overtime provisions of the Line Work Agreement – Local 804 argued that Local 353 should be denied standing because, although 353 had members working at the project, those individuals were not working for Roberts and the outcome of the grievance could not bind 353 – Local 353 submitted that it did indeed have a legal interest in the outcome of the grievance; moreover, Local 353's role in the ongoing administration of the Line Work Agreement and its responsibility to act as a clearinghouse for members of the IBEW assigned to work under the Agreement throughout southern Ontario means that it was not a stranger to the dispute – The Board agreed, holding that Local 353 has a particular status under the Agreement that is not shared by other IBEW Locals – Local 353 added as an intervenor – Matter continues

ROBERTS ONSITE INC.; RE: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804; OLRB file No. 1559-15-G; Dated November 12, 2015; Panel: Harry Freedman (21 pages)

Reconsideration – Related Employer – JMD sought reconsideration of a default decision finding that it was a related employer with The Builders Warehouse – JMD had no notice of the application or the hearing because it failed to keep its corporate address updated – The Painters and Builders entered into Minutes or Settlement as part of the resolution of the application – The Board found no fault with the Painters' delivery of the application materials, nor with anything Builders had done – Nonetheless, the absence of notice should be treated in the same way as the Board treats construction industry grievance referrals – There was clear prejudice in JMD's inability to defend itself against the application – The timely request for reconsideration evinced an unambiguous intent to defend against the allegations – Reconsideration granted; settlement between the Painters and Builders nullified; timelines extended for JMD to file a response – Matter continues

THE BUILDERS WAREHOUSE INC.; RE: ONTARIO COUNCIL OF THE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1891; RE: JMD FIRST-CLASS CONTRACTING INC.; OLRB file No. 1282-15-R; Dated November 30, 2015; Panel: Jesse M. Nyman (7 pages)

COURT PROCEEDINGS

Delay – Discharge – Judicial Review – Unfair Labour Practice – W sought judicial review of a decision denying his claim for severance pay due to delay in bringing the application – W had unsuccessfully challenged his discharge in an earlier proceeding before the Board (judicial review dismissed; leave to appeal denied) – The Board determined that W's severance entitlement had crystallized in 2008, before he launched his initial challenge to the termination – Seeking to revive his claim after he had exhausted his first challenge meant a five-year delay, a lengthy period unacceptable to the Board – The Court found that the Board's attribution that W knew or ought to have known of his options and consequences at the time of the first challenge was unreasonable – Application allowed; matter remitted to the Board for determination on the merits

DEAN WARREN; RE: ONTARIO LABOUR RELATIONS BOARD; RE: NATIONAL HOCKEY LEAGUE; OLRB File No. 2336-13-U; (Court File No. 345/14); Dated: November 26, 2015; Panel: Kruzick, Sachs and Wilton-Siegel, JJ. (17 pages)

Construction Industry Grievance – Damages – Judicial Review – The Plumbers brought an application for judicial review of a Board decision allowing a grievance but awarding no damages – The Board found there was no union contractor who was licensed or authorized to perform the specialized work at issue, so the union had not lost any opportunity for its membership – The Court held that the Board's finding of liability with no monetary consequences was reasonable in these rare circumstances – Application dismissed

PCL CONSTRUCTORS CANADA INC.; RE: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46; RE: ONTARIO LABOUR RELATIONS BOARD; OLRB File No. 3414-11-G; (Court File

No. 240/14); Dated November 27, 2015; Panel: Swinton, Corbett and Ray, JJ. (4 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Cotton Inc. Divisional Court No. 554/15	3254-13-U 3255-13-R	Pending
Kognitive Marketing Inc. Divisional Court No. 51/15 **(London)**	0621-14-ES	Pending
W.H.D. Acoustics Inc. Divisional Court No. 52/15 **(London)**	3151-14-G 3716-14-R	Pending
IBEW Electrical Power Council of Ontario ***(Crossby Dewar Inc.)*** Divisional Court No. 501/15	1697-11-G 1698-11-G	Pending
Labourers' International Union of North America, Local 1059 ***(McKay-Cocker)*** Divisional Court No. 384/15	0883-14-R	Pending
Universal Workers Union, Labourers' International Union of North America, Local 183 ***(Maystar)*** Divisional Court No. 368-15	1938-12-R	Pending
LBM Construction Specialties Inc. Divisional Court No. 353/15	0121-14-R	January 20, 2016
EMT Contractor Division Inc Divisional Court No. 32-15 **(London)**	3514-13-R	Pending
Carlene Bailey Divisional Court No. 173/15	0480-13-U	Pending
Valoggia Linguistique Divisional Court No. 15-2096 **(Ottawa)**	3205-13-ES	Pending
Toran Carpentry Inc. Divisional Court No. 49/15	0229-13-R	January 26, 2016
Royal Ottawa Hospital Divisional Court No. 14-62782 **(Ottawa)**	2461-14-IO	Pending
Dean Warren Divisional Court No. 345/14	2336-13-U	Granted November 26, 2015
Donald A. Williams Divisional Court No. 327/14	1129-13-U	February 18, 2016
PCL Constructors Canada Inc. Divisional Court No. 240/14	3414-11-G	Dismissed November 27, 2015
Godfred Kwaku Hiamey Divisional Court No. 345/13; 346/13	2906-10-U 3568-10-U	August 13, 2015 Dismissed, Seeking leave to CA